

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RICARDO HIZON, DEFENDANT-APPELLANT.***G.R. No. 51449. December 20, 1989*

Ponente: CRUZ, J.

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The complainant claims she was raped by the accused-appellant, but the latter insists he was in church at the time of the alleged offense. The trial court rejected his pious protestations and sentenced him to life imprisonment. He now imputes several errors to the decision and asks that it be reversed.

According to the complainant, the crime took place on January 25, 1976, at a fair on Marcela Street in Caloocan City, at about seven o'clock in the morning. Maria Cristina Cabañero, who was then sixteen years old, was walking around with her friend, Marilou Castillo, also a deaf-mute like her and two years younger, when they were attracted by the poster of a so-called "Wonder Woman" with small deformed hands. They went inside the booth although there was no show at the time. They seated themselves. Soon Ricardo Hizon, the accused-appellant, came in and sat beside Cristina. Without further ado, he touched her breast. Cristina's reaction was to ask Marilou to change places with her. Marilou refused. Cristina then suggested that the two of them leave, but again Marilou refused. But when Ricardo told her to go out, Marilou did, leaving the other two together. It was then that Ricardo started to force his attentions on her, causing her to fall and bump her head on the ground and rendering her unconscious. When she came to, the accused-appellant was removing her clothes. She continued her resistance and boxed him, but he was finally able to satisfy his lust on her.[1]

Continuing the story, Julieta Cabañero testified that a week after her daughter's return to their house in February (she had left on January 7, 1976, to stay with Marilou) she brought Cristina to a doctor because she was sick with flu and had a bleeding. After examination, it was discovered that she had suffered a miscarriage. Two months later, on April 15, 1976, Cristina confessed that she had been raped, and the two of them then went to the police to file a complaint.[2]

The case was investigated by Detective Teodorico Ariñas of the Caloocan City Police. According to him, it was he who arrested Ricardo Hizon after he was pointed to by Cristina as her attacker. She confirmed her initial identification of the accused-appellant when she again picked him out at a police line-up. He also stated that he took Cristina's statement with the aid of an interpreter on May 6, 1976, in which she described her assailant as "kulot po ang buhok, pangit, maitim, may bigote at balbas na kaunti, nakapolong puti na maiksi ang manggas at dalawang bulsa at pantalong murang brown at nakatsinelas na dilaw na goma x x x." [3]

The accused-appellant's defense was alibi and mistaken identity. He argued that he did not fit the description given by Cristina which could have applied to some other employee in the fair. Moreover, he was not an announcer or barker for the sideshow, as described by the complainant, but in fact was assigned to other chores such as setting up the booths, the mini-grocery, and the games. In any case, he was not at the fair grounds in the morning of January 25, 1976, having left at about 4:30 o'clock a.m. for Pasig, Rizal, with his wife and their

daughter, who was to be baptized that day at the Immaculate Conception Church.[4]

According to him, they arrived at his sister's house at 80 M. H. del Pilar, Sto. Tomas, Pasig, at half past five in the morning, staying there until 10:30 o'clock that same morning, when he left for the church with his wife, their daughter, and Rogelio Romero, where they met Felix Dacanay, and Teresita Gutierrez. The baptism was finished at a quarter to twelve that morning and was followed with a small party at his sister's house.[5]

He was corroborated by his sister, Vivian Ceruelos, who affirmed his presence in her house at the time of the alleged rape[6]; Corazon Centeno, the owner of the "feria" and Aurora Naabay, the so-called "Wonder Woman" who both said he was not at the fair on the morning in question[7]; Rogelio Romero, who paid the baptismal fees and received a receipt therefor[8]; and Elpidio Gapud, the parish registrar of the church, who certified to the baptism of the accused-appellant's child on January 25, 1976.[9] A seventh witness, Gorgonio Hizon, testified that Julieta Cabañero offered to withdraw the complaint against his son for a cash settlement of P15,000.00. This offer was rejected because he said his son was innocent.[10]

After evaluating the evidence of the parties, Judge Fernando A. Cruz of the Court of First Instance of Rizal found the accused-appellant guilty beyond reasonable doubt. His alibi was rejected and his identification by Cristina accepted. The trial court gave full credence to the testimony of the complainant, pointing out that she had no reason for implicating Ricardo if he was not really her assailant. It observed that the accused-appellant would have taken only 30 minutes by jeep ride to reach Caloocan City from Pasig and that in any event the corroboration of his relatives and friends was not reliable. Furthermore, the certification of the parish registrar did not necessarily prove that Hizon was present at his daughter's baptism as he was not a signatory of the baptismal certificate. The judge added:

Moreover, the accused could have easily exculpated himself and narrated the facts of which he is now swearing for the Court to believe had he given his statement to the police when they requested it, if it is true that he was not at the place of the crime when the same happened. As it appears, he chooses not and no explanation was advanced for said conduct thereby admitting that the imputation against him is true.[11]

The Court disagrees with the trial court. We find that the accused-appellant's guilt has not been clearly established to overcome the constitutional presumption of innocence in his favor.

Contrary to the findings of the trial judge, the evidence for the prosecution is slipshod and hardly credible. The mere fact that the complainant is a deaf-mute is no assurance that she is telling the truth nor should it excuse the implausibilities of her testimony.

Cristina says she and Marilou Castillo entered the booth of the "Wonder Woman" although there was no show at the time as it was seven o'clock in the morning. She said they seated themselves, but one may ask why, as there was nothing to wait for. When, according to her, Ricardo sat beside her and touched her breast, she did not get angry or resist - all she did was ask Marilou to change places with her. The natural thing to do would have been to stand up and leave but she did not. Improbably, she stayed behind even when Marilou herself went out, leaving her alone with Ricardo.

As for the alleged rape itself, it has not been clearly established that she was forced to submit to Ricardo's will. She says she had recovered consciousness when she was raped but admitted that Ricardo had no weapon to threaten her with, nor did she present any torn clothes to show she had been forcibly undressed. In fact, there was no evidence at all of the rape itself. No physician or medical report was presented to prove Cristina's violation. What Julieta said was that her daughter had a miscarriage but that did not mean she had been raped.

No less significantly, Cristina reported the alleged rape only in April 1976, almost three months after her

supposed violation on January 25, 1976, and only after her miscarriage was discovered two months earlier. Indeed, after the alleged incident, the complainant did not immediately go home to report to her parents but continued staying with her friend Marilou until February, when she returned to her family.

Cristina claims she was afraid, but there is no showing that she had been threatened, either during the actual rape or thereafter. She herself testified as follows:

ATTY. JOSE MEJIA:

Q After this alleged incident, why did you not file a complaint immediately to any police agency of the Government?

A I am afraid, sir.

Q Other than the bumping of your head by the accused, did the accused do anything to you on January 25, 1976?

A Yes, sir.

Q Did you see whether the accused used a revolver or knife before or during the time that he was raping you?

A None, sir.

Q Did he threaten you that he will do something against you should you report the matter to the police?

A Yes, sir.

Q Describe to the Honorable Court the threat which according to you, was made by the accused?

ATTY. MEJIA:

We just would like to make of record that despite the lapse of one minute, the witness cannot answer the question.

WITNESS:

A I am afraid, sir.

ATTY. MEJIA:

Q In other words, the accused did nothing to you except the fact that you were afraid, is that correct?

A Yes, sir.

Q Then why did you not report immediately this matter to any police officer?

A I am afraid.

Q You mean to tell the Honorable Court for a period of six months, you are still afraid?

A Yes, sir.[12]

The Court also looks askance at the detailed description given by Cristina on May 6, 1976, of the person who attacked her almost four months earlier. She even remembered that her assailant's shirt had two pockets, but she also said she was raped on a Friday although the day was actually a Sunday. It is also not easy to believe that she would have been attacked inside an unlocked booth with the "Wonder Woman" sleeping nearby and Marilou looking at her ravishment, by Cristina's own account.

And if it is true that Marilou did see Cristina being raped, why did she not immediately run for help to save her friend? And why was she not presented at the trial as an important material witness? As we observed in *People v. Tempongko*[13]:

One also wonders why Rosalita Quinto, the complainant's companion on the night of the alleged rape, and who was supposed to be in the room when the complainant claimed she was ravished, was not presented as a witness by the prosecution. It is not often that the prosecution has the good fortune of an actual eyewitness in cases like this, and yet neither the fiscal nor the private prosecutor saw fit to ask Rosalita to corroborate the testimony of Lolita. Instead, they presented only the parents of Lolita who testified on what happened after, and not before and during, the alleged rape.

The trial court belittles the accused-appellant's alibi because it is corroborated only by his relatives and friends but this should not make the defense per se invalid. One can accept that when there is a baptism followed by a small party, only relatives and close friends will be in attendance. And it is also not believable, contrary to the suggestion in the decision, that Hizon, who was already in Pasig, would ride back to Caloocan City to commit the rape, and on the very morning of his daughter's baptism to boot, especially in the face of the contrary testimony that he never left his sister's house until 10:30 a.m. to bring the child to church. The defense also submits that Ricardo has straight and not curly hair and is not "pangit" (although there is no claim that he is handsome). As for Gorgonio Hizon's charge that Julieta Cabañero had offered to settle the case for a fee, this was never rebutted and so was impliedly accepted by the prosecution.

In this jurisdiction, the accused is presumed innocent until the contrary is proved, and this by the strongest evidence removing all doubt about his guilt. That evidence has not been established by the prosecution. There was no medical proof of the rape itself, nor was it shown that the complainant had been forced or threatened to submit to her alleged attacker. The trial court relied only on the complainant's identification of the accused-appellant, disregarding the important fact that her friend, who she said had witnessed the rape, did not testify to support her. As for Ricardo's failure to deny the charge against him when he was investigated by the police, the judge erred in holding this as evidence of guilt. The accused-appellant had the right to remain silent during his custodial investigation if he preferred to make his denials at another time. And such silence should not have been taken against him.

The Court finds that it is the complainant's conduct that is questionable or at least difficult to understand. On January 7, 1976, she left her house to live with her friend Marilou Castillo. Although she claims she was raped on January 25, 1976, she did not immediately report the incident to her parents but continued staying with her friend as if nothing had happened. She decided to return home only in February, but even then she said nothing about the supposed rape until three months later, after she suffered the miscarriage. She claims she was afraid of Ricardo but admitted he had not threatened her with any weapon nor could she explain her fear of him. On top of all this, her detailed description of her alleged rapist was hardly credible nor was it clearly applicable to the accused-appellant.

Considering all the above circumstances, we find that the accused-appellant's conviction cannot be sustained. If, indeed, Roberto Hizon raped Cristina Cabañero, he nevertheless must be absolved because his guilt has not been proved beyond the shadow of a doubt. Even if it be argued that the defense is weak, the fact is that the prosecution is even weaker and so must fail by its own impotence.

WHEREFORE, the appealed decision is REVERSED. The accused-appellant is ACQUITTED and ordered immediately RELEASED. No costs.

**SO ORDERED.**

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

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[1] Exhibit "C;" Record, p. 217.

[2] TSN, January 31, 1977, p. 3.

[3] Exhibit "C;" supra.

[4] TSN, August 8, 1978, p. 28; TSN, September 4, 1978, pp. 6 and 23.

[5] TSN, September 4, 1978, pp. 6, 10 and 16.

[6] TSN, March 14, 1978, p. 6.

[7] TSN, December 5, 1977, p. 4; TSN, February 28, 1978, p. 25.

[8] TSN, January 25, 1978, p. 10.

[9] TSN, February 28, 1978, pp. 8-10.

[10] TSN, September 4, 1978, pp. 37-39.

[11] Rollo, p. 19.

[12] Rollo, p. 75.

**[13] 144 SCRA 583.**

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